

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

RODNEY BRANHAM,

Plaintiff,

Case No. 2:06-cv-262

v.

Honorable R. Allan Edgar

DAVID BERGH, et al.,

Defendants.

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**OPINION AND ORDER APPROVING MAGISTRATE JUDGE'S**

**REPORT AND RECOMMENDATION**

The Court has reviewed the Report and Recommendation filed by the United States Magistrate Judge on February 13, 2008. The Report and Recommendation was duly served on the parties. The Court received objections from the Plaintiff and Defendants. In accordance with 28 U.S.C. § 636(b)(1), the Court has performed *de novo* consideration of those portions of the Report and Recommendation to which objection has been made. The Court now finds the objections to be without merit.

In their objections, Defendants contend that the Magistrate Judge erred in his recommendation. Defendants state that they are entitled to rely on Plaintiff's attachments to show that he did not exhaust his administrative remedies. As noted by the Magistrate Judge, Defendants did not offer any documents or other evidence to show that Plaintiff did not exhaust his remedies. As set forth in the report and recommendation, Defendants must come forward with evidence showing that Plaintiff did not file any grievances exhausting his claims, such as a grievance inquiry

report or an affidavit of the party responsible for searching the record. The failure to provide such support in a motion for summary judgment requires the denial of any request for dismissal on the basis of exhaustion. Therefore, Defendants' objections are without merit.

The report and recommendation also concluded that Plaintiff's motions for summary judgment were properly denied. Plaintiff objects to this conclusion by reasserting the claims set forth in his underlying motions. For the reasons stated by the Magistrate Judge in the report and recommendation, Plaintiff's motions are properly denied.

THEREFORE, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (docket 70) is approved and adopted as the opinion of the court.

IT IS FURTHER ORDERED that Defendants' motions for summary judgment (docket #29 and #39) are DENIED.

FINALLY, IT IS ORDERED that Plaintiff's motions for summary judgment (docket #43 and #63) and motion for an extension of time to respond to Defendants' motions (docket #62) are DENIED.

Dated: 3/17/08

/s/ R. Allan Edgar  
R. ALLAN EDGAR  
UNITED STATES DISTRICT JUDGE